IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 44 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
GAEKWAD AND COMPANY - Respondent(s)

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Appearance :
MRS M.M.BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 31/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following questions under section

256(2) of the Income Tax Act,1961 at the instance of the Commissioner of Income-tax, Baroda :

> “(1) Whether, the Appellate Tribunal is right in law in directing the I.T.O. to treat the income from property known as 'Kunj Bungalow' under the head 'Business'?
>
> (2)Whether, the Appellate Tribunal is right in law in deleting the income from property known as 'Jadav Bungalow'?”

2 The Assessment Years are 1977-78 and 1978-79. The relevant accounting periods are 31/3/1977 & 31/3/1978 respectively.

3 The assessee is a firm. As per clause 5 of its partnership deed, the assessee was constituted for running a hotel at Baroda or at any other place or places and to run any other business or businesses as may be mutually agreed upon by the partners thereto. The firm consisted of five partners. One of the partners had brought in property known as 'Kunj Bungalow' as capital contribution at the market value of Rs.1,50,000/- at the time when the firm was originally

formed.

4 For the years under consideration, the Assessing Officer vide orders dated 30/11/1979 and 13/3/1981 respectively, assessed the income from the said property under the head “income from house property”.

5 The assessee carried the matter in appeal before the Appellate Assistant Commissioner claiming that the income from “Kunj Bungalow” should be assessed under the head “business” instead of “income from house property”. The Appellate Assistant Commissioner, for the reasons stated in his order dated 15/12/1981 upheld the order of the Assessing Officer.

6 The assessee carried the matter in Second Appeal before the Income Tax Appellate Tribunal. The Tribunal vide its order dated 7/3/1988 held that the income from the property “Kunj Bungalow” was liable to be computed under the head “business” and accordingly directed the Assessing Officer to treat the income from the said property under the head “business”. The Tribunal found that the property in question was brought into the partnership business by one of the partners for its

exploitation as a business asset. That, right from the inception of the firm, the income from the said property had been assessed under the head “business” and that the firm had been granted registration/renewal under section 185 of the Act, despite the fact that in the earlier years the only source of income of the assessee was from exploitation of the said property. The Tribunal further found that merely because in the previous year relevant to Assessment Year 1977-78 the property had been hired out to the S.S.C.Board for few months, was no ground for taking a different view.

7 Heard Mrs.M.M.Bhatt, learned Standing Counsel for the appellant-revenue. Mrs.Bhatt has relied upon the findings of the Assessing Officer and the Appellate Assistant Commissioner in support of her submissions.

8 Though served there is no appearance on behalf of the respondent-assessee.

9 As can be seen, the Tribunal has arrived at the aforesaid findings of facts after appreciation of the evidence on record and has accordingly held that the income from the said property is required to be computed

under the head “business”. Mrs.M.M.Bhatt has not been able to point out anything to dislodge the aforesaid findings arrived at by the Tribunal. In the circumstances, there is no infirmity in the conclusion arrived at by the Tribunal. Accordingly, it is held that the Tribunal was right in law in directing the Income Tax Officer to treat the income from property known as “Kunj Bungalow” under the head “business”. Question No.1 is accordingly answered in the affirmative i.e in favour of the assessee and against the revenue.

10 In so far as question No.2 is concerned, Mrs.M.M.Bhatt has fairly pointed out that the controversy raised by the said question stands concluded by a decision dated 17/02/2005 of this Court in Income Tax Reference No. 42 of 1993 and Income Tax Reference No.335 of 1993 in the assessee's own case. For the reasons stated in the said order it is held that the Appellate Tribunal is right in law in deleting the income from property known as “Jadav Bungalow”. Question No.2 is accordingly answered in the affirmative, i.e., in favour of the assessee and against the revenue.

11 The Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J) (H.N.Devani,J)

m.m.bhatt